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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,089	06/25/2003	Patrick C. Jackanich	05002.0002.NPUS00	1916
22930	7590	08/23/2005	EXAMINER	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DR, SUITE 200 FALLS CHURCH, VA 22042-2924				NERBUN, PETER P
ART UNIT		PAPER NUMBER		
		3765		

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/603,089	JACKANICH ET AL.
	<b>Examiner</b> Peter P. Nerbur	<b>Art Unit</b> 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 May 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 18-22 is/are allowed.

6) Claim(s) 1-13 and 23 is/are rejected.

7) Claim(s) 14-17 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

Claims 18-22 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 8-12, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Rech et al (U.S.P. 6,012,174), taken as applied in the previous Office action. The patent to Rech et al discloses a novelty hat in the shape of an automobile or an amphibious vehicle, comprising a separate substantially planar top member 26, Fig. 3 having a front portion, a rear portion, and a first side portion and a second side portion (see Fig. 1), a separate substantially planar bottom member 12 having an aperture 22, a separate substantially planar body member 16, and wherein said top member is connectable to said body member and said body member is connectable to said bottom member to form said novelty hat in the shape of said vehicle.

Claims 1-7 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Neppell (U.S.P. 1,418,198), taken as applied in the previous Office action. The patent to Neppell discloses a novelty hat in the shape of a vehicle (a disc shaped air vehicle similar to the one commercially known as a Frisbee ®), comprising a separate substantially planar top member 11, Fig. 1 having a front portion, a rear portion, and a first side portion and a second side portion, a separate substantially planar bottom member 10 having an aperture, a separate substantially planar body member 12, and wherein said top member is connectable to said body member and said body member is

connectable to said bottom member to form said novelty hat in the shape of said vehicle.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rech et al in view of Mahn, Jr. (U.S.P. 5,665,458), taken as applied in the previous Office action. To construct the hat of Rech et al with the decal labels 20 being a part of a cloth laminate as suggested by Mahn, Jr. (at 11, 12, 24, Fig. 4, col. 1, lines 19-21 and col. 2, lines 13-68 and col. 3, lines 1-2) would have been obvious since the decal label would present a more attractive appearance.

Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed May 6, 2005 have been fully considered but they are not persuasive. Applicant states that Rech et al does not teach a top member, a body member, and a bottom member, which are separate pieces, substantially planar, and are connectable to form a novelty hat in the shape of an automobile. The examiner disagrees since the term "separate" is defined as --dissimilar in nature or identity--. The top member 11, Fig. 1 in Rech et al is clearly dissimilar in nature from the body member and bottom member since the top member is much smaller and has a different outline shape compared to the body member

and bottom member. The same reasoning applies when comparing the body member to the top and bottom members and the bottom member when compared to the top and body members. Applicant further states that the foam structure in Rech et al is not “substantially planar” but rather has a “few flat surfaces”. This argument appears more narrow than what is claimed since claim 1 merely recits a separate “substantially planar top member”, a separate “substantially planar bottom member”, and a separate “substantially planar body member”. The top member 26, Fig. 3 of Rech et al is substantially planar as are the the bottom member 16 and body member 12. With regard to clam 13 applicant states that Mahn, Jr. Does not teach a cloth laminate. In col. 2, lines 63-67 and col. 3, line 1, Mahn, Jr. States that the indicia layer can be formed from a flocked material. A “flocked” material is a material that is decorated with wool or cotton fibers. A “cloth” is a pliable material containing natural or synthetic fibers. Since cotton and wool are natural fibers a “flocked” material constitutes a “cloth material”.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P. Nerbun whose telephone number is 571-272-4993. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peter Nerbun  
August 19, 2005



Peter Nerbun  
Primary Examiner